



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary

State Water Project Contract Extension Project

January 15, 2014 10:00 AM – 3:00 PM

Draft Meeting Attendance List

<p><u>California Department of Water Resources Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Ralph Torres (by phone), California Department of Water Resources • Carl Torgersen, California Department of Water Resources <p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin, (by phone) Butte County • Valerie Pryor, Castaic Lake Water Agency • Mark Krause, Desert Water Agency • Tom Glover, Dudley Ridge Water District • Curtis Creel, Kern County Water Agency • Steve Arakawa, MWD of Southern California • Deven Upadhyay, MWD of Southern California • Kathy Cortner, Mojave Water District • Phillip Miller, Napa County Flood Control and Water District • Jon Pernula (by phone), Palmdale Water District • Bob Perreault, Plumas County Flood Control & Water Conservation District • Douglas Headrick, San Bernardino Valley Municipal Water District • Jeff Davis (by phone), San Geronio Pass Water Agency 	<ul style="list-style-type: none"> • Ray Stokes, Santa Barbara County/ Central Coast Water Authority • David Okita, Solano County Water Agency <p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich (by phone), California Department of Water Resources • Kathie Kishaba, California Department of Water Resources • Philip LeCocq, California Department of Water Resources • Jeremiah McNeil, California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources • Lisa Toms, California Department of Water Resources • Dena Uding, California Department of Water Resources
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<u>State Water Project Contractors, and SWC, Inc.</u> <ul style="list-style-type: none"> • Amparo Flores, Alameda County Flood Control Water Conservation District, Zone 7 • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Dan Masnada (by phone), Castaic Lake Water Agency • Dan Charlton, Coachella Valley Water District • Robert Cheng, Coachella Valley Water District • Milli Chennell, Kern County Water Agency • Amelia Minaberrigarai (by phone), Kern County Water Agency • Cindy Kao, Santa Clara Valley Water District • Jaime Dalida, MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California • John Schlotterbeck (by phone), MWD of Southern California • Leah Wills Plumas County Flood Control and Water Conservation District • Mark Gilkey, Tulare Lake Basin Water Storage District • Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District • Theresa Lightle, State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc. • Linda Standlee, State Water Contractors, Inc. 	<u>DWR Consultants for Contract Extension</u> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Erick Cooke (by phone), Environmental Science Associates • Stan Dirks, Orrick, Herrington & Sutcliffe • Cathy McEfee (by phone), Environmental Science Associates • Barbara McDonnell (by phone), MWH Global • Doug Montague, Montague, DeRose and Associates <u>Public</u> <ul style="list-style-type: none"> • Debbie Espe, San Diego Water Agency • Dan McDaniel (by phone), Central Delta Water Agency • Dean Reese (by phone), South Delta Water Agency • Thomas Rinn (by phone), Waterworks Consulting • Patricia Schifferle, Planning and Conservation League <u>Facilitation Team</u> <ul style="list-style-type: none"> • Alex Braunstein, Kearns & West • Macie Eng, Kearns & West • Mike Harty, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West welcomed everyone to the 17th negotiation session. She reviewed the ground rules the action list and asked if there are additional edits to the January 8th negotiation session meeting summary. Hearing no objections, the meeting summary was approved and will be posted to the website.

III. Objectives Discussion

David Okita reviewed the latest version of the SWRDS Finance Committee Draft Charter, saying Contractors had edited two words, adding back the words “and reports.” He said that reporting was an important component for the Contractors and having the language about reports in the Charter will help get support for this document when going back to Contractors’ boards.

Carl Torgersen responded that the Charter as is covers reporting, and so he believes it is unnecessary to be so specific in this section. David stated that a lot of the details on the work

plan have been removed from the current draft of the Charter so the Contractors would like to affirm the reporting function of the Committee in the document. Carl stated that DWR would need to discuss this change and get back to the Contractors.

DWR and SWP Contractors took a short caucus.

Carl Torgersen acknowledged concerns about reports and clarified that the Department can live with including this language. He stated that there are legacy issues, and suggested clarifying expectations and the types of reports to be generated is something the Finance Committee should address.

Carl then reviewed other changes the Department made to the charter. He noted that in Item 2b, the Department changed “framework” to “policies,” and inserted “financial” between “comprehensive” and “management.” Further, regarding the section on Committee Responsibilities, the Department deleted “direct” and replaced it with “review and make recommendations.”

David Okita explained that the expectation of the Contractors is that the Chief Financial Manager would take the lead on the work plan, but it would be a highly interactive process with the Finance Committee to develop the work plan. He asked whether the Department shares the perspective that this would be a collaborative process. Carl replied yes, and Steve Cohen added that by having the Committee approval of the work plan means that the Department would work closely with the Finance Committee. David responded that the SWP Contractors will review and have potential edits on the language after lunch and their caucus. Steve Cohen suggested that the Department and Contractors appear to be aligned on this point. Curtis Creel stated that there is an important distinction between the development and implementation of work plans.

On membership and organizational structure, Carl stated his understanding was that recommendations that go to the Director are items that have been put on the Finance Committee agenda by the Chair or Vice Chair. David Okita affirmed that this is the Contractors understanding as well.

Carl Torgersen reviewed the Department’s feedback on the Contractors Sixth Offer. He stated that regarding Objective 2A, number 8 on edits to the language on replenishment of the General Operating Account (GOA), the Department agrees.

On Objective 2A: Reserves, item 9, GOA Reporting, Carl stated that the Department does not want to be obligated to send a notice any time the GOA is used. He stated that the Department feels that this is unnecessary considering the Finance Committee as it’s been proposed. Carl shared his view that the Finance Committee would be apprised on uses of the GOA. Carl added that the Department is willing to consider regular reporting at some interval. David Okita stated that one of the uses of the GOA is for emergencies, and in those cases the Contractors believe it’s important to receive a notice. Carl stated that going forward the Department would be in touch with the Committee in the case of a SWRDS emergency. In consideration of that, Carl said the DWR does not want to put this language in the contract amendment.

Ray Stokes stated that the idea behind this proposal is that use of the GOA is “a canary in the coal mine,” meaning that something serious is happening if the Department needs to use the GOA. Ray explained that if all other funds have been used and the Department needs to use the GOA for emergencies or cash purposes it’s an important event and the Contractors would want to be aware of the uses. Carl explained that sending a Notice to Contractors is a process that requires several internal steps – drafting, approving, and sending a formal notice. David Okita asked if the Department would consider replacing the language with a notification to the Committee. Rob Cooke asked whether this notification would pertain to only emergencies, or also to cash flow deficiencies. Ray responded that notices would be for both emergencies and cash flow deficiencies. David added that the Contractors will caucus on this issue.

On Objective 2B: Accounts and funding sources and replenishment, Carl suggested that it will take time to fund the SWRDS Support Account (SSA), while the Department is building up the GOA and doesn’t have an SSA. He said the Contractors current proposal ties the Department’s hands while these funds are being established and funded.

On SWRDS Reinvestment Account (SRA) replenishment and on the first sentence in Section 2B: Accounts Carl Torgersen asked about the intent behind the language emphasizing that DWR can’t charge the Contractors or use System Revenues. David Okita said the intent is that replenishment of funds for non-water supply purposes should not be billed to the Contractors. Steve Cohen said the language should be clarified. Ray Stokes acknowledged that the language as it is proposed could be misleading. Carl Torgersen said that there was a similar issue in the wording on the GOA replenishment. Stan Dirks asked to clarify whether the concern is that the Contractors are not separately billed for replenishment. The SWP Contractors affirmed that this was the case and agreed the language needs to be revised.

Steve Cohen stated that DWR and Contractors are in agreement that DWR would not charge the Contractors for a non-water supply use of GOA funds. Ray Stokes noted that the language clarification also applies to the SRA.

Carl Torgersen then reviewed Objective 2B: Accounts, B. SWRDS Support Account, 2. SSA Uses. He suggested that the Department does not agree with “the sole use” language. He also suggested that Objective 2B, B. 2 b and c on reimbursable expenditures should not be in the contract amendment.

Carl stated that until DWR gets the accounts established and fully funded it is not necessarily the case that all non-reimbursable water supply charges would go through the SSA. He explained that while DWR still has systems revenues available DWR wants the flexibility to use systems revenue funds. Carl also said DWR has a concern that Contractors want more control over the State Water Project, and these proposals limit DWR’s ability to manage these funds. He acknowledged that Contractors should have some input; however, decisions regarding funding of the accounts should not be tied to specific timeframes until after 2035.

David Okita said the Contractors would need to caucus on that issue. Ray Stokes clarified that Contractors added this language to address DWR’s interest in not being obligated on uses of 51(e) revenues and it was linked to eliminating the cap. Ray said that the Contractors added this language to provide flexibility. Steve Cohen stated that the SSA would primarily be available post-2035.

Deven Upadhyay, stated that he believed that B.2.c is about negotiating DWR's flexibility and disagreed that DWR has this flexibility now. He suggested that on this point, DWR and the Contractors were negotiating from a different understanding of the Water Contract. Carl said that he thought this was a timing issue, and that DWR would be willing to take a phased approach. He suggested that once the accounts are funded to a certain level, the Finance Committee could make a recommendation on uses of the funds in these accounts.

Deven suggested that there would be a shift in equity amongst the Contractors if DWR chooses to invest 51(e) revenues in a way that would benefit some, but not all, Contractors. He clarified that he feels the existing Contract precludes B.2.c. Perla Netto-Brown and Steve Cohen responded that this wasn't correct; both reiterated that DWR has at times spent these revenues without seeking reimbursement. Ray Stokes stated that the concern is with utilizing those funds to benefit one or some, but not all Contractors. Steve Cohen stated that there is 50 years of history of dealing with these costs.

Perla Netto-Brown clarified that on uses of funds for O&M for recreation the funds are initially paid out of systems revenue, and then funds are transferred out of Davis-Dolwig for reimbursement. She stated that the Davis Dolwig fund is a separate fund and an appropriation from the legislature. She clarified that the SSA and SRA would be accounts within the Burns Porter bond fund.

Carl Torgersen stated that on Objective 2B: Accounts, B. SSA, item 10. SSA Backstop, the Department is open to taking out this item at this time, assuming the rest of the package comes together. Carl also stated that the Department agrees to remove the SSA cap (B. SSA, 5). David Okita clarified that removal of the caps was a package deal with the language being discussed on flow of funds and the accounts.

On Objective 2B: C. State Water Facilities Capital Account, Carl explained that the Department is proposing that the State Water Facilities Capital Account (FCA) stay open for five years after the Contract is signed, and then the Finance Committee could make a recommendation to the Director on whether to close it or not.

Ray Stokes asked if, given the establishment of the GOA, SRA, and SSA, whether there is a need for the FCA. Perla responded that the FCA is generally used for non-bondable and non-chargeable costs. Ray asked if there was a reason that DWR could not close the FCA and put the funds in the SSA. Perla said that DWR wants to keep the account initially noting that it is a higher priority in the flow of funds than the SSA.

On Objective 2C: Flow of Funds, A. 1, Carl Torgersen stated that DWR is proposing an additional \$7.5 million in rate reductions for a total of \$48 million in exchange for settling claims on adjustment of the water contractors' responsibility for facilities south of Dos Amigos. He explained that the Department proposes to eliminate items 4.a.b.c. on waive and release of claims, and also to eliminate 5.b. on waive and release of DWR's treatment of energy from off aqueduct power facilities. But 5.a. on facilities south of Dos Amigos would remain in contract amendments.

On Objective 2C: Flow of funds, item 2 Carl suggested that the Director has the discretion to transfer up to 80 percent of systems revenue into one of three accounts (GOA, SRA, SSA). Curtis

Creel clarified that the DWR proposal is that the Director has the discretion, not that he or she will transfer the funds. Carl said that was correct. Carl also suggested that on Objective 2C: Flow of Funds, item 3 on reconciliation the Department recommends deleting this language. Ray Stokes stated that the Contractors see a need for a reconciliation process for 51(e) revenues. Carl responded that DWR would need to discuss this internally.

On Objective 2E; Supplemental Billing, Carl stated that DWR is proposing that supplemental billing stay in effect, though the Finance Committee could recommend to the Director that supplemental billing be eliminated at a later point. He explained that DWR's position is that prior to the GOA, SSA, and SRA being fully funded, there may be a need for supplemental billing, and after they are funded, the Finance Committee could make a recommendation for its elimination.

Steve Cohen noted that DWR is obligated to not do anything that will have material, adverse impacts on bondholders. He said that eliminating supplemental billing before the Department has an adequate backstop or other sources of funds could have such an impact. He further stated that these are the considerations that the bond attorneys will have when reviewing the contract amendment.

Steve stated that on Objective 3A: Simplification of Billing, B. Defining Pay-As-You-Go Repayment of Costs Incurred Post-2015, item 3 on other costs, including capital costs not financed, it is a goal to make sure that all capital costs would be covered, even where debt financing is not used. He explained that these smaller capital costs that may not be financed with debt financing need to be covered.

Carl Torgersen then reviewed the proposed paragraphs on Objective 3D: Billing Authorization. He stated that the first three paragraphs are not necessary from DWR's perspective since these exist in the Water Code, and that the last paragraph is deal-killer. David Okita responded that the Water Code could change with legislative action, and Contractors want the security of having this language in the contract.

DWR and SWP Contractors took a break for lunch and to caucus.

IV. Objectives Discussion Continued

David Okita reviewed changes to the Finance Committee Charter. The SWP Contractors suggested that the Contractors are OK with all the language changes except one. He suggested that the Finance Committee "guides" the development of the work plan (rather than the review and recommendation language), with the concept being that the development of the work plan is a collaborative process. Curtis Creel stated that the Contractors view work plan approval as a reactive activity, whereas guidance in the workplan's development is more iterative. Carl said he didn't necessarily agree with that characterization, but if the Contractors have no other edits, then he can agree with this language change.

There then was a discussion on finalizing the Charter. Anna West affirmed that the Charter is final and this is a significant moment to note it's completion by the group. Kearns & West will accept all changes and post this clean charter on the website. It was agreed that we will call it a Final Draft Charter. The outstanding topic on the charter is how to make the charter a binding

document, and whether it is a stand-alone binding document or an exhibit to the contract amendment. Deven stated that a small group of managers and attorneys will need to meet to address this outstanding topic. It was agreed that the small group will work out concepts on this topic and bring them back to this Contract Extension group for negotiation and finalization.

David Okita reviewed the Contractor's 7th Offer with the caveat that edits were made in a short time period and may need to be revisited. On GOA and SSA replenishment, David explained that the Contractors tried to reflect the language discussed in the morning adding a sentence "DWR will not charge the Contractors to replenish the GOA for non-water supply costs." On notification on 2A: Reserves, A: GOA, item 9, GOA Reporting, David stated that the Contractors proposed that written notification goes to the Finance Committee. Anna asked if this could include an email notice, and David affirmed this could be the approach.

On Objective 2B: Accounts (SSA, SRA, FCA), David explained that the Contractors position has changed. David stated that the Contractors are comfortable with DWR having different accounts and with the Director's discretion to transfer across the accounts, but Contractors still want better reporting in return. He stated that the Contractors added language so the Director has the flexibility to move money around in the accounts.

Carl Torgersen asked to clarify if there is really such a thing as SRA Replenishment (Objective 2B, A item 5). David Okita replied that Contractors also thought it wasn't the right term and are open to suggestions.

David also explained that the revised proposal separated treatment of the SSA pre-2035 and post-2035. He reported that the Contractors took out the phrase "sole source" in the proposal for the SSA pre-2035. After 2035, Contractors added language to clarify that the SSA is the sole source.

David stated that there is no need for an SSA cap or cap adjustments (Objective 2B: Accounts, B. SSA, Initial Cap and Cap Adjustment Determination) with the current proposal. The Contractors also added the concept that DWR will not charge Contractors for replenishment of the SSA for non-water supply costs (Objective 2B: Accounts, B. SSA, 7. SSA Replenishment). The Contractors also added the reconciliation concept back in Objective 2C: Flow of Funds, A., item 3) and deleted all waiver items except Dos Amigos (Objective 2C, items 4 & 5).

David further reported that on supplemental billing (Objective 2E, A.1), the Contractors added a sentence that clarifies that DWR would only use supplemental billing after exhausting all other cash balances. On reimbursable water supply costs where DWR chooses not to bill the Contractors, the Contractors proposed that DWR would need to get Contractor approval (added Objective 2F: 51 (e) Revenue Limitations. David also explained that the Contractors added a new Objective 2G on reporting requirements. The Contractors will bring more specific recommendations on this to the next meeting.

David explained that on other costs, including capital costs not being financed (Objective 3A: Simplification of Billing, B., item 3) the Contractors propose that it requires agreement from the Contractors. On Objective 3D, Billing Authorization, SWP Contractors left in the first three paragraphs on Davis-Dolwig from the Water Code and removed the fourth paragraph. Carl

reported that his legal counsel suggests that if there is legislation it could also change the contract. David suggested that the Contractors will review this with their legal counsel.

V. Next Steps

The meeting was interrupted due to a fire emergency on the 11th floor of the Resources Building. DWR and SWP Contractors briefly discussed and agreed that the next meeting would be on Wednesday, January 22, 2014.

VI. Public Comment

There were no public comments.

VII. Adjourn

The meeting was adjourned.

Action Items	Responsibility Due Date
1. Finalize and post January 15 Negotiation Session Meeting Summary to the website.	K&W ASAP
2. DWR to prepare a response on the SWP Contractors' 7 th Offer	DWR 1/22
3. SWP Contractors to consider/evaluate linkage between legislation on the water code and contract language (Objective 3D: Billing Authorization)	SWP Contractors 1/22
4. DWR and SWP Contractors will tell Anna West who their lead negotiators and legal small group representatives are to address the Charter topic on binding agreement/separate binding document or an exhibit in contract amendments.	DWR and SWP Contractors 1/17
5. Post Charter and Draft Offer Documents from 1/15 meeting.	DWR and K&W ASAP
6. Prepare language on reporting (Objective 2G: Reporting Requirements)	SWP Contractors 1/22